

Formal Statement
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Chairman Davis, Mr. Waxman, and members of the committee, I wish to thank you for holding this hearing on efforts to improve the personnel security process as well as for inviting me to testify today.

By section 5.2 of Executive Order (E.O.) 12958, as amended, "Classified National Security Information," the President established the organization I direct, the Information Security Oversight Office, often called "ISOO." We are within the National Archives and Records Administration and by law and Executive order (44 U.S.C. 2102 and sec. 5.2(b) of E.O. 12958) are supervised by the Archivist of the United States, who appoints the Director, ISOO with the approval of the President. Under Executive Orders 12958 and 12829 (which established the National Industrial Security Program) and applicable Presidential guidance, the ISOO has substantial responsibilities with respect to classification of information by agencies within the Executive branch.

The classification system and its ability to restrict the dissemination of information, the unauthorized disclosure of which could result in harm to our nation and its citizens represents a fundamental national security tool at the disposal of the Government and its leaders to provide for the "common defence." The protocols governing access to classified national security information are established by E.O. 12968, "Access to Classified Information." Pursuant to section 3.1 of this order, such access shall be granted only to "individuals who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information". The order goes on to state that eligibility "shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security". In order to ensure consistent eligibility determinations from agency to agency, E.O. 12968 required the issuance of investigative standards and adjudicative guidelines. These standards and guidelines were originally issued in 1997; the investigative standards were modified in December 2004 and the adjudicative guidelines were modified in December 2005.

The December 2005 revisions to the adjudicative guidelines were approved by the President for immediate implementation. They represented the results of an interagency process, which recommended that all of the basic considerations for approving access to classified information -- allegiance to the United States, foreign influence, drug and

alcohol abuse, criminal behavior, psychological instability, and so forth, be retained. However, in each case, based upon the changing national security environment, it was recommended that the criteria be elaborated, both in terms of the actions that could raise security concerns and the factors that could mitigate such concerns.

It should be noted that a number of the revisions included in the adjudicative guidelines were intended to address a concern expressed by this Committee and others with regard to personnel security applicants with certain foreign connections. Specifically, a number of “per se” criteria, such as use of a foreign passport or voting in a foreign election, that previously rendered an applicant ineligible for a security clearance have been modified to take into account additional factors that could mitigate such issues under certain circumstances. These and other changes were implemented, in part, in recognition of the increasing globalized environment in which our national security concerns must be addressed. The revised adjudicative guidelines are intended to provide sufficient flexibility to accommodate this reality without compromising national security.

In addition to the above, E.O. 12968 contains two fundamental principles – reciprocity of access eligibility determinations and the authority of agency heads or designated senior agency officials to grant exceptions to eligibility criteria in order to further substantial national security interests – two imperatives that contain inherent tension but are not necessarily incompatible.

On the one hand, reciprocity of access eligibility determinations requires strict adherence to investigative standards and adjudicative criteria. E.O. 12968 is very clear when it states “background investigations and eligibility determinations conducted under (the) order shall be mutually and reciprocally accepted by all agencies.” The imperative of reciprocity has been further emphasized by Title III of Public Law 108-458, “The Intelligence Reform and Terrorism Prevention Act of 2004” as well as Executive Order 13381, “Strengthening Processes Relating to Determining Eligibility for Access to Classified National Security Information.”

On the other hand, classification and personnel security policy clearly recognizes that it may be in the national interest to grant access to classified information to individuals who are otherwise not authorized or eligible for access. For example, E.O. 12958 includes provisions that allow agency heads or designees, in an emergency, when necessary to respond to an imminent threat to life or in defense of the homeland, to authorize the disclosure of classified information to an individual or individuals who are otherwise not eligible for access. Likewise, E.O. 12968 recognizes the authority of an agency head to waive requirements for granting access to classified information to further substantial national security interests. Examples of the latter include the frequent challenge many agencies confront today in developing and maintaining cadres of cleared linguists in many specialty languages. Oftentimes, native speakers of some of these languages may have foreign connections which otherwise would make them ineligible for a security clearance. However, many agencies avail themselves of the latitude allowed in the Order and grant exceptions and waivers to clearance eligibility criteria in order to avail themselves of a critical national security skill which otherwise may be in short supply. In fact, it is not an uncommon occurrence for intelligence community agencies to grant a waiver to the requirement that prohibits granting access to sensitive compartmented

information to individuals with non-U.S. citizen immediate family or non-U.S. citizen cohabitants. The key, however, is that each time a waiver or exception is granted, it should be an informed judgment, which takes into account the advantage to the national interest that may accrue at the same time the risk to national security information that may increase.

Such latitude, of course, comes at a price, and included in that price can be reciprocal recognition of security clearances. Reciprocity guidelines clearly state that if the existing access eligibility determination is based upon a waiver or deviation, or if access is otherwise subject to conditions, reciprocal recognition of security clearances between agencies is not required. However, with more than 3 million active access eligibility determinations in effect, reciprocity standards are written in order to address the most common conditions and situations. Americans have every right to expect that an access eligibility determination made on their behalf by one Executive branch agency will be reciprocally and immediately recognized by all other agencies provided it was not granted under a waiver, deviation or condition. As such, what is required is proactive management and oversight by individual agencies in order to achieve reciprocity by ensuring strict adherence to standards in the vast majority of cases while at the same time allowing sufficient latitude to meet unique national security demands in other areas.

In order to foster the imperative of reciprocity while recognizing the need to allow latitude in addressing other national security demands, a number of initiatives have recently been undertaken under the direction of the Security Clearance Oversight Group led by the Office of Management and Budget (OMB). First, an interagency group known as the “Collaboration Forum” has been established to allow professional adjudicators from all Executive branch agencies to collaborate on common issues. It is designed to increase familiarity with processes, procedures and issues confronted by individual agencies, and build confidence in each other’s adjudicative decisions. Included in this are the circumstances under which agencies grant waivers and exceptions to eligibility criteria, to include in the area of foreign preference, in order to meet other national security demands. The forum has held several meetings to date and substantive issues, to include potential policy issues, have been identified for resolution.

In addition, under the auspices of the Collaboration Forum, and under the leadership of the Director of National Intelligence’s (DNI) Special Security Center (SSC), a Personnel Security Reciprocity Review Program has been initiated. This program was undertaken in recognition of the fact that reciprocity depends on consistency of adjudicative decision-making across the government. Under the Personnel Security Reciprocity Review Program, teams from the DNI’s SSC, augmented at times by representatives from other agencies, will visit and review most Executive branch adjudicative facilities by the end of the calendar year. Visits are documented and action items are identified and assigned to appropriate individuals and/or agencies along with meaningful milestones for completion. The overall objective of the reviews is to identify inconsistencies in application of policy and to provide a mechanism (through the Collaboration Forum, the Security Clearance Oversight Group, or the Information Security and Records Access

Policy Coordination Committee of the National Security Council) for resolution. To date, more than half a dozen reviews have taken place.

In closing, I want to emphasize the ongoing interagency efforts that are currently underway in order to strengthen the processes relating to determining eligibility for access to classified national security information. Included in these is the need to focus on leveraging technology to the point that we can diminish reliance on the current half-century-old process of conducting field investigative work through greater reliance on automated use of databases. Research and pilot efforts to this end are currently underway in a number of agencies. These efforts will ensure continuing process improvements; even after the current statutory case completion goals are achieved.

Again, I thank you for inviting me here today, Mr. Chairman, and I would be happy to answer any questions that you or the subcommittee might have at this time.